



Resolution 2218 (2018)¹

Provisional version

Fighting organised crime by facilitating the confiscation of illegal assets

Parliamentary Assembly

1. The Parliamentary Assembly notes with deep concern that according to World Bank and European Union estimates organised criminals make hundreds of billions of euros in criminal profits every year. The illegal assets accumulated by criminals over time enable them to bribe and put pressure on politicians, law-enforcement officials and witnesses and to distort entire markets, by distorting and even eliminating competition. Such power threatens the stability of even the most solid democracies and the social contract between the citizens and the State on which all free societies are based.
2. Confiscation of illegal assets has multiple benefits: it makes crime less financially rewarding, saps the power bestowed on criminals by their wealth, deprives them of “seed money” needed for future crimes and generates resources to compensate victims and rebuild communities damaged by crime.
3. The Assembly notes that confiscation of criminal assets is often prevented by an unreasonably heavy burden of proof placed on the competent national authorities and by ineffective co-operation between the authorities in different countries in tracking, freezing and confiscating criminal assets across borders.
4. It further notes that Ireland, Italy, the Netherlands and the United Kingdom have passed specific legislation to facilitate the confiscation of illegal assets, in particular by reducing the authorities’ burden of proof regarding the criminal origin of unexplained wealth, through the use of factual presumptions or even, under certain conditions, a *de facto* reversal of the burden of proof.
5. Such measures (also referred to as non-conviction-based confiscation, civil forfeiture, confiscation *in rem* or unexplained wealth orders) have successfully withstood scrutiny by the highest courts of the countries concerned and also by the European Court of Human Rights. They were found to be compatible with human rights, including the presumption of innocence and the right to peaceful enjoyment of one’s possessions.
6. Provided sufficient safeguards exist, in particular full judicial review of any confiscatory measures by independent and impartial courts, the Assembly strongly supports non-conviction-based confiscation or similar measures as the most realistic way for States to tackle the enormous and inexorably growing financial power of organised crime, in order to defend democracy and the rule of law.
7. Effective international co-operation in tracking, freezing and confiscating criminal assets depends on an appropriate legal framework that ensures sufficient harmonisation of procedures whilst allowing for different national approaches, without discrimination.
8. Relevant international instruments include the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its two additional protocols (ETS Nos. 99 and 182), the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), the 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and several United Nations instruments (including the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 2000 Convention against

1. *Assembly debate* on 26 April 2018 (17th Sitting) (see [Doc. 14516](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Mart van de Ven). *Text adopted by the Assembly* on 26 April 2018 (17th Sitting).



Transnational Organised Crime and the 2003 Convention against Corruption). Not all of these, however, have been ratified by all Council of Europe member States and other States having a special status with the Council of Europe or its Parliamentary Assembly. This state of affairs creates loopholes, through which organised criminals continue to escape confiscation of their illegal assets.

9. The Assembly therefore invites all member States of the Council of Europe and other States having a special status with the Council of Europe to:

9.1. provide for non-conviction-based confiscation in their national laws, as well as the possibility of equivalent value confiscation and taxation of criminal gains, whilst establishing appropriate safeguards, and adopt successfully tested good practices, including:

9.1.1. allowing for full judicial review, by an independent and impartial tribunal, within a reasonable time, of any decision to freeze or confiscate illegal assets;

9.1.2. granting compensation to persons whose assets were frozen or confiscated erroneously;

9.1.3. providing for legal aid for judicial review and compensation proceedings for persons who cannot afford a legal representative;

9.1.4. creating a specialised body to deal with the freezing and confiscation of illegal assets, with a professional, multidisciplinary staff having access to relevant information held by law-enforcement bodies (in particular the police and customs) and the tax and social welfare authorities;

9.1.5. ensuring that the specialised body administers frozen assets in such a way as to preserve their value until they are definitively confiscated, and to dispose of confiscated assets in such a way as to maximise the benefit for society as a whole and to avoid inappropriate incentives;

9.1.6. allowing this specialised body to use special investigative tools, such as access to financial information held by other public bodies, undercover operations, and real-time monitoring of bank accounts;

9.1.7. regularly informing the general public of both operations successfully carried out and problems encountered;

9.2. promote international co-operation in this field by taking expeditious action and co-operating with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds of crime, in particular by:

9.2.1. signing and ratifying all international legal instruments facilitating tracking, freezing and confiscating illegal assets (paragraph 8);

9.2.2. applying these instruments in a co-operative, non-bureaucratic way, placing a special emphasis on spontaneous exchanges of information, without insisting on reciprocity and without excluding or otherwise placing at a disadvantage those States that have already introduced non-conviction-based confiscation regimes;

9.2.3. promoting international networks of competent professionals, such as the CARIN (Camden Asset Recovery Inter-Agency Network) and the ARO (Asset Recovery Offices) platform or other relevant fora;

9.2.4. setting up and using more frequently joint investigation teams, such as those set up with the assistance of Eurojust and Europol, and by promoting more frequent involvement of non-member States of the European Union in such teams;

9.2.5. making special investigative techniques available also in cross-border investigations;

9.2.6. defining clear rules for the sharing of successfully confiscated assets among the countries involved.